

### **REMARKS/ARGUMENTS**

In the Office Action, the Examiner rejects Claims 1-7, 8-14, 16-17, 19-24, 26-27, 29-37, 38-82, 84-87, and 88-90 under 35 U.S.C. §103(a) as being unpatentable over European Patent No. EP0973112 to Goodwin III ("Goodwin") in view of either U.S. Patent App. Pub. No. 2002/0184088 to Rosenberg ("Rosenberg") or U.S. Patent App. Pub. No. 2007/0250400 to Eglen et al. ("Eglen"). Applicants have amended Claims 21 and 74 to further patentably distinguish the cited references. In light of the amendments and subsequent remarks, Applicants respectfully request reconsideration and allowance of the claims.

#### **The Rejection of Independent Claims 1, 11, 31, 41, 49, and 59 is Overcome**

Independent Claims 1, 11, 31, 41, 49, and 59 of the present application each recite that the item for which price information is provided is capable of being sold at a plurality of different predefined price levels and at least one entry in the results is modified to reflect a more competitive price or position when compared to another entry in the results by increasing availability of the entry at a predefined price level at the more competitive price. For example, an airline may choose to increase the availability of a fare class that is generally only available for advance purchases to produce a more competitive price even though the advance purchase deadline has passed. *See, e.g.* paragraphs 30-32 of the present application. The Examiner acknowledges that Goodwin does not disclose increasing availability of the at least one item entry. The Examiner instead relies on either Rosenberg or Eglen.

Rosenberg is directed to a system and method for the presentation of advertisements. Depending on actions taken by viewers of advertisements, e.g., when a viewer clicks the advertisement, bonus exposure of the advertising message is given. In particular, the Examiner cites paragraph 7 of Rosenberg as teaching the recitation of increasing availability of the entry at a predefined price level at the more competitive price. However, Rosenberg merely teaches that increasing inventory, i.e., increasing availability of advertising impressions spurred by the growth in size and use of the Internet makes previous fixed-price schemes less appropriate for sellers of advertising space due to price decreases caused by a virtually limitless supply of advertising space. Consequently, Rosenberg teaches offering performance-based pricing for

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advertising, i.e., pricing based upon a number of views of or interactions with advertising. *See, e.g.* paragraphs 7-11 of Rosenberg. Thus, Rosenberg at most teaches adjusting a number of exposures of advertising based on reflected interest of viewers in that advertising message, but does not teach or suggest adjusting inventory based on predefined price levels of different impressions or a comparison between impressions to determine the competitiveness with respect to one another, let alone modifying at least one entry in the results to reflect a more competitive price or position when compared to another entry in the results comprises increasing availability of the entry at a predefined price level at the more competitive price, as recited by independent Claims 1, 11, 31, 41, 49, and 59.

Eglen is directed to a system for dynamically pricing digital media content based on profit optimization or time between purchases. The Examiner submits that paragraphs 107 and 134 of Eglen teach the recitation of increasing availability of the entry. However, paragraph 107 merely teaches dynamic repricing of an item based on profitability at a price level, a floor or ceiling price, bandwidth of connection, file size of an item, popularity of an item, or demand for an item. Paragraph 134 merely relates to recording demand for an item in a cache. Thus these cited excerpts do not teach or suggest increasing availability of the entry, such as by making available a fare class that is generally unavailable at a given time. Nor does any other portion of Eglen teach or suggest this recitation. Applicants therefore submit that Eglen does not teach or suggest modifying at least one entry in the results to reflect a more competitive price or position when compared to another entry in the results comprises increasing availability of the entry at a predefined price level at the more competitive price as recited by independent Claims 1, 11, 31, 41, 49, and 59.

Since none of the references, taken alone or in combination, teaches or suggests the recitations of independent Claims 1, 11, 31, 41, 49, and 59, Applicants submit that the rejection is overcome and that the claims are in condition for allowance.

#### The Rejection of Independent Claims 21 and 74 is Overcome

Independent Claims 21 and 74 have been amended to each recite modifying at least one entry in the database results to reflect a more competitive price or position when compared to another entry in the database results based at least partially on combining a price and a non-

monetary incentive to produce the more competitive price or position, modifying a price based on a level of service provided to produce the more competitive price or position, or marking up the at least one entry while maintaining a competitive price position with respect to at least one other entry in the results. The Examiner admits that Goodwin does not disclose modifying an entry based at least partially on combining a price and a non-monetary incentive to produce the more competitive price or position, modifying a price based on a level of service provided to produce the more competitive price or position, or marking up the at least one entry while maintaining a competitive price position. Rosenberg also does not teach or suggest this recitation.

The Examiner instead relies on Eglen. Firstly, Eglen does not teach or suggest modifying an entry based at least partially on combining a price and a non-monetary incentive to produce a more competitive price or position. For example, frequent flyer miles may be combined with an entry so as to make the entry more competitive with respect to other entries. *See, e.g.* paragraphs 98-137 of the present application. At most, Eglen teaches that its dynamic pricing system may be used to dynamically price items other than digital media, such as video rental coupons. Purchased video rental coupons may then be printed by the purchasing customer. Eglen additionally teaches that vouchers for purchased items may be printed so that the purchaser may redeem the purchased item in a physical store. Thus, at most, Eglen teaches purchasing a non-monetary item, such as a coupon or voucher, which may be redeemed for an item. Nowhere does Eglen teach or suggest modifying an entry based at least partially on combining a price and a non-monetary incentive to produce a more competitive price or position for sale of an item as recited by independent Claims 21 and 74.

Secondly, Eglen does not teach or suggest modifying a price based on a level of service provided as also recited by independent Claims 21 and 74. For example, modifying a price based on a level of service provided may include reducing an airline fare entry for a flight itinerary having more connections than one or more other airline fare entries. In this regard, an entry offering service less desirable than that of another entry may be reduced in price to make it more competitive with the entry offering better service. *See, e.g.* paragraphs 78-97 of the present application.

Thirdly, Eglen does not teach or suggest marking up the at least one entry while maintaining a competitive price position with respect to at least one other entry in the results as also recited by amended independent Claims 21 and 74. In this regard, for example, if an entry has an advantage, such as location or service advantage, the entry may be increased to a price above that of another entry while still maintaining a competitive price position with respect to the other entry. In a further example, if an agent has negotiated a fixed price for a first entry with a supplier and that price is below that of one or more other entries, the price of the first entry may be increased while still maintaining a competitive price position with the one or more other entries. *See, e.g.* paragraphs 138-176 or the present application. At most, Eglen teaches pricing an item based upon characteristics of the item, such as profitability at a price level, a floor or ceiling price, bandwidth of a connection used to download the media item, file size of the media item, or popularity of the item. *See, e.g.* paragraph 107 of Eglen. Thus, Eglen does not teach or suggest marking up the at least one entry while maintaining a competitive price position with respect to at least one other entry in the results as recited by independent Claims 21 and 74.

Therefore, Applicants respectfully submit that none of the references, taken alone or in combination, teaches or suggests independent Claims 21 and 74. As such, Applicants further submit that Claims 21 and 74 are patentably distinct from the cited references and are in condition for allowance.

#### The Rejection of the Dependent Claims is Overcome

Because each of the dependent claims includes each of the limitations of a respective independent claim, Applicants also submit that the dependent claims are allowable for at least those reasons discussed above.

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### CONCLUSION

In view of the amendments and remarks presented above, it is respectfully submitted that all of the present claims of the present application are in condition for immediate allowance. It is therefore respectfully requested that a Notice of Allowance be issued. The Examiner is encouraged to contact Applicant's undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



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